IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.927 of 2003

Date of Decision: March 21, 2007

Suraj Mal

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.K.Jain, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

Mr.J.V
.Yadav, Advocate.

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RANJIT SINGH, J.

Respondents No.2 to 4 were convicted for an offence under Sections 325/324 read with Section 34 IPC and were sentenced to suffer RI for two years with fine of Rs.500/-each for an offence under Section 325 IPC and RI for one year with fine of Rs.200/-each for an offence under Section 324 IPC. They filed an appeal against the order of conviction and the sentence, but did

not contest the same when it came up for hearing. It was specifically stated on their behalf that they would not contest the correctness/legality of the findings of conviction, but prayed for their release on probation. Accordingly, while dismissing their appeal and taking into consideration the statement made by the private respondents, they were ordered to be released on furnishing bonds in the sum of Rs.10,000/-each with one surety in the like amount for a period of one year. This order passed by the Appellate Court is under challenge in the present revision.

Notice in this case was issued to consider the aspect of awarding compensation only. It is stated that issue regarding grant of compensation, after release on probation, may be debatable one. Mr.R.K.Jain, the counsel appearing for the petitioner has referred to Section 5 of the Probation of Offenders Act, 1958 (hereinafter called the “Act”) to say that power to award compensation is clearly available under the said Section. The counsel also refers to the provisions of Section 357(3) Cr.P.C., to say that this would also entitle the court to award compensation. He has finally referred to the case of ***State of Punjab Vs. Gurmej Singh, AIR 2002 SC 2811,*** where Hon'ble Supreme Court has observed that the provisions of Section 357(3) Cr.P.C. are not applicable in the cases where sentence of fine is not imposed. Reading of Sub-section (3) of Section 357 Cr.P.C.would clearly show that the question of award of compensation would arise where the court imposes a sentence of which fine form a part of it. In other words, where the fine imposed is a sentence, then compensation under Section 357(3) Cr.P.C. is not available to be utilised. This appears to be with a purpose. Question

of awarding compensation of course would arise where fine is not imposed as in cases where fine is imposed, the same can be ordered to be paid to the victim and as such no compensation otherwise may be payable. In the instant case, the sentence of fine was imposed on both counts to each of the respondents. Accordingly, it may not be open to award compensation by utilising the provisions of Section 357(3) Cr.P.C.

A perusal of the impugned order does not indicate if the respondents were released on probation under the provisions of Sections 360/361 Cr.P.C. or under the provisions of the `Act'. This issue will acquire significance. As pointed out by Mr.J.V.Yadav, counsel for respondents, there are some broad distinctive features to the respective provisions of Cr.P.C. and of the `Act'. In this regard, he has referred to the case of ***State of Punjab Vs. Harbans Lal, 1983(1) C.L.R.290***. As noticed in this judgment, the spirit of the Legislation now is that the twin beneficial provisions should alternatively be available to every court. In this very judgment, the distinctive features were noticed by this court in both the enacted provisions available before the court for release of the offenders on probation. One of the distinctive feature, as noticed by the court, is that Section 5 of the Act authorises the court to require a released offender to pay compensation and costs. This compensation is payable for a loss or injury caused to any person by the commission of offence. It was further noticed that, on the other hand, releasing a person under Section 360 Cr.P.C., the court cannot ask the offender to pay expenses or to pay any compensation for any loss or injury caused by an offence. It is in this background that the Hon'ble

Supreme court in the case of ***Girdhari Lal v. State of Punjab, AIR 1982 Supreme Court 1229*** held that order envisaged under Section 357 can only be passed when the court imposes a substantive sentence of fine. Thus, an order of compensation under Section 357 (3) can only be made when fine forms part of the sentence. There is no indication that respondents were released on probation under the `Act'. They in fact were sentenced to fine also. It may be noticed that when an order of release on probation for good conduct is made under Section 360 Cr.P.C., it does not remove the disqualification attached to a conviction as there is no provision like Section 12 of the Act in the Code. This distinction is also pointed out by this court in ***Harbans Lal's case (supra)***.

Accordingly, while upholding the order releasing the respondents, the fine imposed in this case shall stand enhanced to a sum of Rs.5000/-each. The enhanced amount of fine shall be paid to the petitioner. It is further directed that in default of payment of fine, the respondents would be liable to undergo the sentence as originally awarded by the trial court.

The present revision is disposed of in the above terms.

March 21, 2007 (RANJIT SINGH)
ramesh JUDGE